

INVESTIGATING PRESCRIBING OF CONTROLLED SUBSTANCES FOR PAIN

POLICY

In 1994, the Medical Board of California (MBC) formally adopted a policy statement entitled "Prescribing Controlled Substances for Pain," and "Guidelines for Prescribing Controlled Substances for Intractable Pain." Pursuant to section 2241.6 of the California Business and Professions Code, effective January 1, 2002, revised guidelines, "Guidelines for Prescribing Controlled Substances for Pain," were adopted by the MBC on August 1, 2003. These revised guidelines will provide better guidance to physicians and surgeons and to the MBC's Enforcement Program, as to whether or not allegations of inappropriate prescribing are supported by evidence.

Investigations that involve prescribing controlled substances for acute or persistent pain shall be conducted in accordance with physician guidelines adopted by the MBC (attached). These guidelines establish standard procedures for physicians to follow when prescribing controlled substances for pain. Where previous guidelines focused largely on treatment of intractable pain, the recent revisions include guidelines for treatment of all types of pain. Investigations containing allegations of inappropriate prescribing (i.e., under treatment, inappropriate treatment or excessive treatment) must determine if the physician failed to adhere to the standard of care that the guidelines are intended to address.

COMMENTS

The Intractable Pain Treatment Act of 1990, included in Business and Professions Code section 2241.5, states, "a physician may prescribe or administer controlled substances in the course of treatment of that person for a diagnosed condition causing intractable pain." The statute also defines the term, "intractable pain," and lists a series of acts a physician would have to commit in order to be in violation of this section.

Effective in 1998, the Pain Patient's Bill of Rights (Sections 129460 and 129461 of the California Health and Safety Code) adds language regarding the rights of patients in intractable pain. Among other things, these provisions state that a patient has the right to request or reject the use of any and all modalities, including any invasive procedure in favor of opioid medication. The treating physician may refuse to prescribe opioids for the patient, but then must advise the patient that there are practitioners who specialize in the treatment of severe, chronic, intractable pain and whose treatment methods include opioids. The patient who is being treated with opioids for chronic, intractable pain may ask his or her physician for written documentation of such treatment for presentation to law enforcement or if emergency treatment is required. The physician who does prescribe to these patients must comply with the California Intractable Pain Treatment Act.

Effective in 1999, Health and Safety Code section 11159.2 was added which provides that a prescription for a Schedule II controlled substance, for use by a patient who has a terminal illness, as defined, is exempt from the existing requirement that Schedule II controlled

substances be completed on a triplicate prescription, with copies sent to the Department of Justice.

Effective in 1999, Business and Professions Code section 725, pertaining to clearly excessive treatment or prescribing, was amended to provide that no physician in compliance with the California Intractable Pain Treatment Act (CIPTA) is subject to disciplinary action under section 725 for lawfully prescribing or administering controlled substances in the course of treatment of a person for Intractable pain.

Effective in 1999, Business and Professions Code section 2024 was amended to require consulting physicians who provide expert review of investigations involving a licensee to be a *specialist*, as defined under Business and Professions Code section 651(h)(5)(B).

Effective in 2002, Business and Professions Code section 2190.5 was added requiring *all* physicians and surgeons to complete a mandatory continuing education course in the subjects of pain management and the treatment of terminally ill and dying patients. This course is a one-time requirement of 12 credit hours to be completed by December 31, 2006.

All physicians licensed on or after January 1, 2002 shall complete this requirement within four years of their initial license or by their second renewal date, whichever occurs first. *NOTE: This does not apply to physicians who practice in radiology or pathology specialty areas.*

PROCEDURES

Investigators requesting an expert reviewer for an MBC case involving pain management issues shall use at least two experts and ensure that one physician and surgeon is "board certified" in the areas of pain management (i.e., American Board of Anesthesiology or the American Board of Pain Medicine) and one physician is board certified in the same specialty as the physician under investigation. In addition, on February 2, 1996, the MBC approved the American Board of Pain Medicine (a non ABMS member specialty board) to advertise board certification. The MBC extended the approval to February 2, 2005. Therefore, physicians who are certified by the American Board of Pain Medicine may qualify as expert reviewers.

When an investigator requests an expert opinion, the investigator shall provide the selected expert reviewers with the case documents to be reviewed, and provide a copy of the following legal code sections and Board guideline included in this EOM section:

- Business & Professions Code section 2190.5 (Mandatory Continuing Education Classes in Pain Management and Treatment; Exemptions)
- Business & Professions Code section 2241.5 (Intractable Pain Treatment Act)
- Health And Safety Code section 11159.2 (Treatment of Terminally Ill Patient With Schedule II Controlled Substances For Pain Relief; Prescriptions)
- Health And Safety Code section 124961 (Pain Patient's Bill of Rights)
- Guideline For Prescribing Controlled Substances For Intractable Pain, 2003